

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 907

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978 TO
CLARIFY INVESTMENT GUIDELINES PURSUANT TO THE UNIFORM PRUDENT
INVESTOR ACT; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-8-7 NMSA 1978 (being Laws 1957,
Chapter 179, Section 7, as amended) is amended to read:

"6-8-7. POWERS AND DUTIES OF STATE INVESTMENT OFFICER--
INVESTMENT POLICY--INVESTMENT MANAGERS.--

A. Subject to the limitations, conditions and
restrictions contained in policy-making regulations or
resolutions adopted by the council and subject to prior
authorization by the council, the state investment officer may
make purchases, sales, exchanges, investments and reinvestments

1 of the assets of all funds administered under the supervision
2 of the council. The state investment officer shall see that
3 money invested is at all times handled in the best interests of
4 the state.

5 B. Securities or investments purchased or held may
6 be sold or exchanged for other securities and investments;
7 provided, however, that no sale or exchange shall be at a price
8 less than the going market at the time the securities or
9 investments are sold or exchanged.

10 C. ~~[In purchasing bonds, the state investment~~
11 ~~officer shall require a certified or original written opinion~~
12 ~~of a reputable bond attorney or the attorney general of the~~
13 ~~state certifying the legality of the bonds to be purchased;~~
14 ~~provided, however, this written opinion may be the approving~~
15 ~~legal opinion ordinarily furnished with the bond issue.] Assets~~
16 of the land grant permanent funds and other funds managed by
17 the state investment officer may be combined for investment in
18 common pooled funds to effectuate efficient management.

19 D. The state investment officer shall formulate and
20 recommend to the council for approval investment regulations or
21 resolutions pertaining to the kind or nature of investments and
22 limitations, conditions and restrictions upon the methods,
23 practices or procedures for investment, reinvestment, purchase,
24 sale or exchange transactions that should govern the activities
25 of the investment office.

1 E. The council shall meet at least once each month,
2 and as often as exigencies may demand, to consult with the
3 state investment officer concerning the work of the investment
4 office. The council shall have access to all files and records
5 of the investment office and shall require the state investment
6 officer to report on and provide information necessary to the
7 performance of council functions. The council may hire one or
8 more investment management firms to advise the council with
9 respect to the council's overall investment plan for the
10 investment of all funds managed by the investment office and
11 pay reasonable compensation for such advisory services from the
12 assets of the applicable funds, subject to budgeting and
13 appropriation by the legislature. The terms of any such
14 investment management services contract shall incorporate the
15 statutory requirements for investment of funds under the
16 council's jurisdiction.

17 F. For the purposes of the investment of all funds
18 managed by the investment office, the state investment officer
19 shall manage the funds in accordance with the prudent investor
20 rule set forth in the Uniform Prudent Investor Act. With the
21 approval of the council, the state investment officer may
22 employ investment management services to invest the funds and
23 may pay reasonable compensation for investment management
24 services from the assets of the applicable funds, subject to
25 budgeting and appropriation by the legislature.

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1 G. For funds available for investment for more than
2 one year, the state investment officer may contract with any
3 state agency to provide investment advisory or investment
4 management services, separately or through a pooled investment
5 fund, provided the state agency enters into a joint powers
6 agreement with the council and that state agency pays at least
7 the direct cost of such services. Notwithstanding any
8 statutory provision governing state agency investments, the
9 state investment officer may invest funds available from a
10 state agency pursuant to a joint powers agreement in any type
11 of investment permitted for the land grant permanent funds
12 under the prudent investor rule. In performing investment
13 services for a state agency, the council and the state
14 investment officer are exempt from the New Mexico Securities
15 Act of 1986. As used in this subsection, "state agency" means
16 any branch, agency, department, board, instrumentality,
17 institution or political subdivision of the state, the New
18 Mexico finance authority and any tax-exempt private endowment
19 entity whose sole beneficiary is a state agency. "

20 Section 2. Section 6-8-9 NMSA 1978 (being Laws 1957,
21 Chapter 179, Section 9, as amended) is amended to read:

22 "6-8-9. SECURITIES AND INVESTMENT. -- ~~[A.]~~ Money made
23 available from the land grant permanent funds for investment
24 ~~[for a period in excess of one year may]~~ shall be invested
25 pursuant to the Uniform Prudent Investor Act and an investment

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1 policy adopted by the council that covers each investment
2 application; provided, however, that:

3 A. not more than sixty-five percent of the book
4 value of the funds shall be invested at any given time in
5 corporate stocks;

6 B. not more than ten percent of the voting stock of
7 a corporation shall be held;

8 C. stocks eligible for purchase shall be restricted
9 to those stocks of businesses listed upon a national stock
10 exchange or included in a nationally recognized list of stocks;
11 and

12 D. not more than fifteen percent of the book value
13 of the fund may be invested in international securities at any
14 single time. [in the following classes of securities and
15 investments:-

16 ~~(1) bonds, notes or other obligations of the~~
17 ~~United States government, its agencies, government-sponsored~~
18 ~~enterprises, corporations or instrumentalities and that portion~~
19 ~~of bonds, notes or other obligations guaranteed as to principal~~
20 ~~and interest and issued by the United States government, its~~
21 ~~agencies, government-sponsored enterprises, corporations or~~
22 ~~instrumentalities or issued pursuant to acts or programs~~
23 ~~authorized by the United States government;~~

24 ~~(2) bonds, notes, debentures and other~~
25 ~~obligations issued by the state of New Mexico or a municipality~~

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1 ~~or other political subdivision of the state that are secured by~~
2 ~~an investment grade bond rating from a national rating service,~~
3 ~~pledged revenue or other collateral or insurance necessary to~~
4 ~~satisfy the standard of prudence set forth in Section 6-8-10~~
5 ~~NMSA 1978;~~

6 ~~(3) bonds, notes, debentures, instruments,~~
7 ~~conditional sales agreements, securities or other evidences of~~
8 ~~indebtedness of any corporation, partnership or trust organized~~
9 ~~and operating within the United States rated not less than Baa~~
10 ~~or BBB or the equivalent by a national rating service;~~

11 ~~(4) bonds, notes, debentures, instruments,~~
12 ~~conditional sales agreements, securities or other evidences of~~
13 ~~indebtedness rated not less than BB or B or the national~~
14 ~~association of insurance commissioners' equivalent by a~~
15 ~~national rating service. An investment made under this~~
16 ~~paragraph shall be in publicly traded debt issues with an~~
17 ~~outstanding par value of at least one hundred million dollars~~
18 ~~(\$100,000,000) and issued by a corporation, partnership or~~
19 ~~trust listed on a national exchange and organized and operating~~
20 ~~within the United States; provided that investments made~~
21 ~~pursuant to this paragraph shall not exceed three percent of~~
22 ~~the market value of the land grant permanent funds, calculated~~
23 ~~at the time of investment;~~

24 ~~(5) notes or obligations securing loans or~~
25 ~~participation in loans to business concerns or other~~

1 ~~organizations that are obligated to use the loan proceeds~~
 2 ~~within New Mexico, to the extent that loans are secured by~~
 3 ~~first mortgages on real estate located in New Mexico and are~~
 4 ~~further secured by an assignment of rentals, the payment of~~
 5 ~~which is fully guaranteed by the United States in an amount~~
 6 ~~sufficient to pay all principal and interest on the mortgage;~~

7 ~~(6) common and preferred stocks and~~
 8 ~~convertible issues of any corporation; provided that it has~~
 9 ~~securities listed on one or more national stock exchanges or~~
 10 ~~included in a nationally recognized list of stocks; and~~
 11 ~~provided further that the fund shall not own more than five~~
 12 ~~percent of the voting stock of any company;~~

13 ~~(7) real estate investments, including real~~
 14 ~~property and undivided interests in real property, debt~~
 15 ~~instruments secured by first liens on real property or limited~~
 16 ~~partnership interests; provided that the total value of~~
 17 ~~investments made under this paragraph shall not exceed three~~
 18 ~~percent of the market value of the land grant permanent funds,~~
 19 ~~calculated at the time of investment;~~

20 ~~(8) securities of non-United States~~
 21 ~~governmental, quasi-governmental, partnership, trust or~~
 22 ~~corporate entities, and these may be denominated in foreign~~
 23 ~~currencies; provided:~~

24 ~~(a) aggregate non-United States~~
 25 ~~investments shall not exceed fifteen percent of the book value~~

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1 ~~of the land grant permanent funds;~~

2 ~~(b) for non-United States stocks and~~
3 ~~non-United States bonds and notes, issues permitted for~~
4 ~~purchase shall be limited to those issues traded on a national~~
5 ~~stock exchange or included in a nationally recognized list of~~
6 ~~stocks or bonds;~~

7 ~~(c) currency contracts may be used for~~
8 ~~investing in non-United States securities only for the purpose~~
9 ~~of hedging foreign currency risk and not for speculation;~~

10 ~~(d) the investment management services~~
11 ~~of a trust company or national bank exercising trust powers or~~
12 ~~of an investment counseling firm may be employed; and~~

13 ~~(e) reasonable compensation for~~
14 ~~investment management services and other administrative and~~
15 ~~investment expenses related to these investments shall be paid~~
16 ~~directly from the assets of the funds, subject to budgeting and~~
17 ~~appropriation by the legislature; and~~

18 ~~(9) stocks or shares of a diversified~~
19 ~~investment company registered under the federal Investment~~
20 ~~Company Act of 1940, as amended, and listed securities of long-~~
21 ~~term unit investment trusts or individual, common or collective~~
22 ~~trust funds of banks or trust companies that invest primarily~~
23 ~~in equity securities authorized in Paragraphs (6) and (8) of~~
24 ~~this subsection; provided that the investment company has total~~
25 ~~assets under management of at least one hundred million dollars~~

~~(\$100,000,000); and provided further that the council may allow reasonable administrative and investment expenses to be paid directly from the assets derived from these investments, subject to budgeting and appropriation by the legislature.~~

~~B. Not more than sixty-five percent of the book value of the land grant permanent funds shall be invested at any given time in securities described in Paragraphs (6), (8) and (9) of Subsection A of this section, and no more than ten percent of the book value of the land grant permanent funds shall be invested at any given time in securities described in Paragraph (3) of Subsection A of this section that are rated Baa or BBB. Assets of the land grant permanent funds may be combined for investment in common pooled funds to effectuate efficient management.~~

~~C. Commissions paid for the purchase and sale of any security shall not exceed brokerage rates prescribed and approved by national stock exchanges or by industry practice.]"~~

Section 3. Section 6-8-20 NMSA 1978 (being Laws 1987, Chapter 219, Section 3, as amended) is amended to read:

"6-8-20. PRIVATE EQUITY INVESTMENT ADVISORY COMMITTEE CREATED - - MEMBERSHIP - - DUTIES - - TERMS - - LIABILITIES - - CONFLICT OF INTEREST. - -

A. There is created the "private equity investment advisory committee" to the council. The committee consists of the state investment officer, a member of the council appointed

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1 by the governor and three members who are qualified by
2 competence and experience in finance and investment and
3 knowledgeable about the private equity investment process and
4 who are appointed by the governor.

5 B. Members appointed by the governor, except the
6 council member, shall be appointed for three-year terms;
7 provided that the terms of the initial committee members shall
8 be staggered so that the term of one member expires each year.
9 After the initial appointments, all governor-appointed members
10 shall be appointed for three-year terms. Members shall serve
11 until their successors are appointed. A vacancy occurring
12 other than by expiration of term shall be filled in the same
13 manner as the original appointment, but only for the unexpired
14 term.

15 C. The committee shall review and make
16 recommendations to the council on private equity and film
17 investments authorized pursuant to Sections [~~6-8-21, 7-27-5.6,~~
18 ~~7-27-5.15 and 7-27-5.26~~] 6-8-9 and 7-27-5 NMSA 1978 and shall
19 advise the council in matters and policies related to such
20 investments. The committee shall establish policies for
21 [~~national~~] private equity [~~fund~~] investments [~~New Mexico~~
22 ~~private equity fund investments~~] and New Mexico film [~~private~~
23 ~~equity fund~~] investments not less often than annually and shall
24 make copies available to interested parties.

25 D. Members of the committee shall receive per diem

1 and mileage as provided for nonsalaried public officers in the
 2 Per Diem and Mileage Act and shall receive no other
 3 compensation, perquisite or allowance.

4 E. The committee shall elect annually a chairman
 5 from among its members and may elect other officers as
 6 necessary. The committee shall meet upon the call of the
 7 chairman or the state investment officer.

8 F. Members of the committee are public employees
 9 within the meaning of the Tort Claims Act and are entitled to
 10 all immunity and indemnification provided under that act.

11 G. No person may be a member of the committee if
 12 any recommendation, action or decision of the committee will or
 13 is likely to result in direct, measurable economic gain to that
 14 person or his employer.

15 H. The state investment officer may enter into
 16 contracts with investment advisors for private equity [fund]
 17 investments and film [fund] investments authorized pursuant to
 18 Sections [~~6-8-21, 7-27-5.6, 7-27-5.15 and 7-27-5.26~~] 6-8-9 and
 19 7-27-5 NMSA 1978 and may pay budgeted expenses for the advisors
 20 from the assets of any fund administered under the supervision
 21 of the council, as applicable. "

22 Section 4. Section 7-27-5.15 NMSA 1978 (being Laws 1990,
 23 Chapter 126, Section 5, as amended by Laws 2001, Chapter 238,
 24 Section 1 and by Laws 2001, Chapter 252, Section 10) is amended
 25 to read:

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1 "7-27-5. 15. ~~[NEW MEXICO PRIVATE EQUITY FUND AND]~~ SMALL
2 BUSINESS INVESTMENTS. - -

3 ~~[A. No more than three percent of the market value~~
4 ~~of the severance tax permanent fund may be invested in New~~
5 ~~Mexico private equity funds under this section.]~~

6 ~~B. If an investment is made under Subsection A of~~
7 ~~this section, not more than fifteen million dollars~~
8 ~~(\$15,000,000) of the amount authorized for investment pursuant~~
9 ~~to Subsection A of this section shall be invested in any one~~
10 ~~New Mexico private equity fund. The amount invested in any one~~
11 ~~New Mexico private equity fund shall not exceed fifty percent~~
12 ~~of the committed capital of that fund.]~~

13 ~~C. In making investments pursuant to Subsection A~~
14 ~~of this section, the council shall give consideration to~~
15 ~~investments in New Mexico private equity funds whose~~
16 ~~investments enhance the economic development objectives of the~~
17 ~~state.]~~

18 ~~D. The state investment officer shall make~~
19 ~~investments pursuant to Subsection A of this section only upon~~
20 ~~approval of the council and upon review of the recommendation~~
21 ~~of the private equity investment advisory committee. The state~~
22 ~~investment officer is authorized to make investments pursuant~~
23 ~~to Subsection A of this section contingent upon a New Mexico~~
24 ~~private equity fund securing paid-in investments from other~~
25 ~~accredited investors for the balance of the minimum committed~~

1 ~~capital of the fund.~~

2 ~~E. As used in this section:~~

3 ~~(1) "committed capital" means the sum of the~~
4 ~~fixed amounts of money that accredited investors have obligated~~
5 ~~for investment in a New Mexico private equity fund and which~~
6 ~~fixed amounts may be invested in that fund on one or more~~
7 ~~payments over time; and~~

8 ~~(2) "New Mexico private equity fund" means any~~
9 ~~limited partnership, limited liability company or corporation~~
10 ~~organized and operating in the United States and maintaining an~~
11 ~~office staffed by a full-time investment officer in New Mexico~~
12 ~~that:~~

13 ~~(a) has as its primary business activity~~
14 ~~the investment of funds in return for equity in or debt of~~
15 ~~businesses for the purpose of providing capital for start-up,~~
16 ~~expansion, product or market development, recapitalization or~~
17 ~~similar business purposes;~~

18 ~~(b) holds out the prospects for capital~~
19 ~~appreciation from such investments;~~

20 ~~(c) has a minimum committed capital of~~
21 ~~fifteen million dollars (\$15,000,000);~~

22 ~~(d) has at least one full-time manager~~
23 ~~with at least three years of professional experience in~~
24 ~~assessing the growth prospects of businesses or evaluating~~
25 ~~business plans and who has established permanent residency in~~

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1 ~~the state;~~

2 ~~(e) is committed to investing or helps~~
3 ~~secure investing by others in an amount at least equal to the~~
4 ~~total investment made by the state investment officer in that~~
5 ~~fund pursuant to this section, in businesses with a principal~~
6 ~~place of business in the state and that hold promise for~~
7 ~~attracting additional capital from individual or institutional~~
8 ~~investors nationwide for businesses in the state; and~~

9 ~~(f) accepts investments only from~~
10 ~~accredited investors as that term is defined in Section 2 of~~
11 ~~the federal Securities Act of 1933, as amended, (15 U.S.C.~~
12 ~~Section 77(b)) and rules and regulations promulgated pursuant~~
13 ~~to that section.~~

14 F.] The state investment officer shall make a
15 commitment to the small business investment corporation
16 pursuant to the Small Business Investment Act to invest one-
17 fourth of one percent of the market value of the severance tax
18 permanent fund by July 1, 2001 to create new job opportunities
19 by providing land, buildings or infrastructure for facilities
20 to support new or expanding businesses. If invested capital in
21 the small business investment corporation should at any time
22 fall below one-fourth of one percent of the market value of the
23 severance tax permanent fund, further commitments shall be made
24 until the invested capital is equal to one-fourth of one
25 percent of the market value of the fund. As used in this

1 subsection, "invested capital" means the original capital
2 contributed less any return of cost by the private equity
3 funds. "

4 Section 5. A new section of Chapter 7, Article 27 NMSA
5 1978 is enacted to read:

6 "[NEW MATERIAL] SECURITIES AND INVESTMENT. -- Money made
7 available from the severance tax permanent fund for investment
8 shall be invested pursuant to the Uniform Prudent Investor Act
9 and investment policy adopted by the council that covers each
10 investment application. "

11 Section 6. REPEAL. -- Sections 6-8-10, 6-8-18, 6-8-19,
12 6-8-21 and 7-27-5 through 7-27-5.25 NMSA 1978 (being Laws 1957,
13 Chapter 179, Section 10, Laws 1970, Chapter 2, Section 2, Laws
14 1987, Chapter 126, Section 1, Laws 1997, Chapter 183, Section
15 5, Laws 1983, Chapter 306, Sections 7, 8 and 10 through 12,
16 Laws 1987, Chapter 219, Section 2, Laws 1989, Chapter 265,
17 Section 3, Laws 1990, Chapter 126, Sections 4 and 5, Laws 1990,
18 Chapter 127, Section 10, Laws 1990 (2nd S.S.), Chapter 3,
19 Section 2, Laws 1993, Chapter 267, Sections 1 through 3, Laws
20 1995, Chapter 155, Section 36, Laws 1995, Chapter 215, Section
21 2, Laws 1997, Chapter 45, Section 3, Laws 1997, Chapter 178,
22 Section 3 and Laws 2000, Chapter 5, Section 4, as amended) are
23 repealed.

24 Section 7. EMERGENCY. -- It is necessary for the public
25 peace, health and safety that this act take effect immediately.

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